

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATTRESS FIRM, INC.,

Plaintiff,

v.

MATRESSLAND,
JUSTIN YEAGER,
DEANO MERRIGAN,
AND MIKE MERRIGAN

Defendants

CIVIL ACTION NO. 4:14-cv-260

JURY TRIAL REQUESTED

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

ON THIS DAY, the Court considered Plaintiff, MATTRESS FIRM, INC. ("Plaintiff" or "Mattress Firm") and Defendants MATTRESSLAND, JUSTIN YEAGER, DEANO MERRIGAN and MIKE MERRIGAN (collectively, the "Defendants") (collectively, the "Parties") Agreed Final Judgment and Permanent Injunction (the "Judgment"), requesting the entry of this Judgment based upon a Settlement Agreement between the Parties. As evidenced by the signatures of the counsel for Mattress Firm and each Defendant on this Judgment, the Parties have agreed that MATTRESS FIRM's claims shall be dismissed without prejudice, and that MATTRESS FIRM may reassert its claims for damages and other relief should the Defendants breach the Settlement Agreement.

The Court, based upon the Parties' request, GRANTS the Judgment, ordering the following in this case:

IT IS ORDERED that the term “MATTRESS FIRM STYLIZED MARK” in this Judgment shall mean Mattress Firm’s mark where the term “MATTRESS” is presented in all

capital letters with the “M” having a larger font size than the remaining capitalized letters of the word and presented adjacent the term “MATTRESS” is the four letter term “FIRM,” displayed in all capital letters and of the same font size as the “M” in the term “MATTRESS” and the overall mark is presented in red letters.

IT IS FURTHER ORDERED that the term “MATTRESSLAND STYLIZED MARK” in this Judgment shall mean Mattressland’s mark where the term “MATTRESS” is presented in all capital letters with the “M” having a larger font size than the remaining capitalized letters of the word and the term “MATTRESS” is followed by the four letter term “LAND,” displayed in all capital letters and of the same font size as the “M” in the term “MATTRESS” and the overall mark is presented in red letters, as shown in Exhibit A hereto.

IN IS FURTHER ORDERED that the term “Material” or “Materials” in this Judgment shall include but is not limited to signage, literature, paper advertising, stationery, business cards, and other tangible material.

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the Defendants are permanently enjoined from using any marks, including but not limited to the MATTRESSLAND STYLIZED MARK, that are confusingly similar to or otherwise infringe any trademarks or services marks used by Mattress Firm.

IT IS FURTHER ORDERED that within forty-five (45) days of the entry of this Judgment, at any Defendants’ store location where the MATTRESSLAND STYLIZED MARK is displayed on exterior or interior signage, the Defendants shall change the color of the MATTRESSLAND STYLIZED MARK to blue on all exterior and interior signage.

IT IS FURTHER ORDERED that within forty-five (45) days of the entry of this Judgment, at any Defendants’ store location where the MATTRESSLAND STYLIZED MARK

is displayed on exterior or interior signage, the Defendants shall change the "M" in the word "MATTRESS" in MATTRESSLAND STYLIZED MARK to be of the same size or smaller in font than all other letters in the word "MATTRESS."

IT IS FURTHER ORDERED that within forty-five (45) days of the entry of this Judgment, at any Defendants' store location where the MATTRESSLAND STYLIZED MARK is displayed on exterior or interior signage, the Defendants shall change the MATTRESSLAND STYLIZED MARK to include at least two (2) character spaces between the term "MATTRESS" and the term "LAND," such that the two terms appear as two distinct and separate words, a character space being defined as the width of the widest letter among the terms "MATTRESS" and "LAND" as they appear in the signage.

IT IS FURTHER ORDERED that at any Defendants' store location where the MATTRESSLAND STYLIZED MARK is displayed on exterior or interior signage, with regard to any Materials in possession of the Defendants and that contain the MATTRESSLAND STYLIZED MARK, where the MATTRESSLAND STYLIZED MARK is not changed in accordance with this Judgment, the Defendants agree to destroy the Materials within forty-five (45) days of the Judgment.

IT IS FURTHER ORDERED that with regard to any Materials in possession of the Defendants on the entry of the Judgment and that contain the MATTRESSLAND STYLIZED MARK, consume or destroy the materials within forty-five (45) days of the Judgment.

IT IS FURTHER ORDERED that the Defendants shall not order any new Materials bearing the MATTRESSLAND STYLIZED MARK, nor take delivery of any Materials bearing the MATTRESSLAND STYLIZED MARK not in the possession of the Defendants on the date of the entry of this Judgment.

IT IS FURTHER ORDERED that within fifteen (15) days of the entry of the Judgment, the Defendants agree to cease and desist from all use of the MATTRESSLAND STYLIZED MARK, or any mark similar thereto, on all electronic media owned or controlled or associated with any of the Defendants, including, without limitation, all websites, software, electronic applications for mobile or portable electronic devices, or television or other digital broadcasts.

IT IS FURTHER ORDERED that at any of the Defendants store locations where the Defendants do not use the MATTRESSLAND STYLIZED MARK, any use of the terms "MATTRESS" and "LAND", regardless of the color, shall include either the term "& Furniture" or the term "and Furniture" ("the Furniture Portion") presented with the terms "MATTRESS" and "LAND" in a font size being at least equal to or larger in size than either of the terms "MATTRESS" or "LAND".

IT IS FURTHER ORDERED that the Defendants shall not take any future action that would challenge or erode any trademark or service mark utilized by Mattress Firm, including without limitation, use of the MATTRESSLAND STYLIZED MARK or any mark confusingly similar to or otherwise infringe any trademarks or services marks used by Mattress Firm.

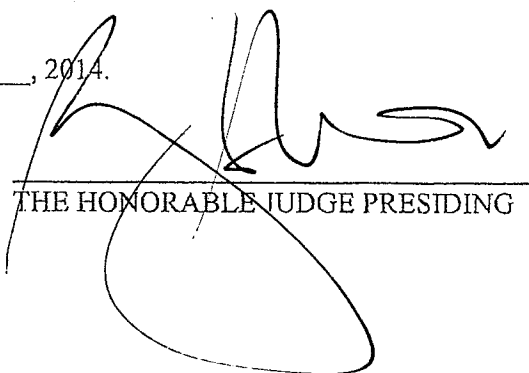
IT IS FURTHER ORDERED that within sixty (60) days of the entry of this Judgment, Mattressland shall file with this Court and serve upon counsel for Mattress Firm, a report in writing and under oath, setting in detail the date, manner, and steps taken by the Defendants to comply with this Judgment.

IT IS FURTHER ORDERED that in granting this Judgment the Court makes no findings or conclusions as to the factual and legal issues in dispute and that all claims are dismissed without prejudice.

IT IS FURTHER ORDERED that the relief provided herein is not intended to subsume, override, or alter any covenants, representations, or obligations made or assumed by the Parties or any one of the Parties in the Settlement Agreement.

IT IS FURTHER ORDERED that each party shall bear its own costs of the Court. This is a Final Judgment.

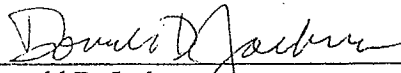
SIGNED this the 12th day of MAY, 2014.



THE HONORABLE JUDGE PRESIDING

Agreed as to Form and Substance:

HAYNES AND BOONE, LLP



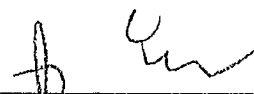
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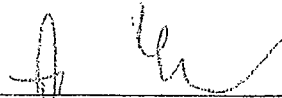
ATTORNEYS FOR PLAINTIFF
MATTRESS FIRM, INC.



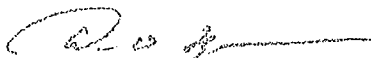
On Behalf of Mattressland

Name: Justin Yeager

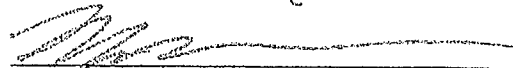
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EXHIBIT A

MATTRESSLAND